

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON**

TESSENDERLO KERLEY, INC., a
Delaware corporation,

Plaintiff,

v.

D & M CHEM, Inc., a Washington
corporation,

Defendant.

Case No. 2:11-cv-03112-LRS

**STIPULATED MOTION AND
ORDER OF DISMISSAL**

The parties being in agreement, and the Court being duly and sufficiently advised;

IT IS HEREBY STIPULATED, ORDERED AND ADJUDGED that:

1. The Claim Construction Order (Docket Item 116) is FINAL as to all claim constructions therein including but not limited to the Court's claim constructions for the claim terms "[particles as applied] allow for the exchange of gases on the surface of said crop" (U.S. Patent No. 6,110,867) and "[said membrane] allows for the exchange of gases on the surface of said substrate" (U.S. Patent No. 6,464,995).

2. All Claims of Plaintiff Tessenderlo Kerley, Inc. as set forth in the Complaint (Docket Item 1) be, and hereby are, DISMISSED with prejudice as to Defendant D & M Chem, Inc., and its directors, officers, employees, attorneys, insurers, successors and assigns, subsidiaries, affiliates, divisions, parent companies, and related corporate entities;

3. All Counterclaims of Defendants/Counterclaimants D & M Chem, Inc. as set forth in its Answer and counterclaims (Docket Item 35) be, and hereby are, DISMISSED with

STIPULATED MOTION AND ORDER OF DISMISSAL

Page 1 of 2

Kuffel, Hultgren, Klashke, Shea & Ellerd, LLP

1915 Sun Willows Blvd.

Pasco, WA 99301

(509) 492-3032

prejudice as to Counterclaim Defendant Tessenderlo Kerley, Inc., and its directors, officers, employees, attorneys, insurers, successors and assigns, subsidiaries, affiliates, divisions, parent companies, and related corporate entities; and

4. Each party to bear its own attorneys' fees and costs.
5. The District Court Executive shall close the file in this matter.

Dated this 29th day of March, 2013.

SO STIPULATED: ¹

s/ Edward F. Shea, Jr.

Edward F. Shea, Jr. (WSBA #23704)
KUFFEL, HULTGRENN, KLASHKE,
SHEA & ELLERD, LLP
1915 Sun Willows Blvd.
Pasco, WA 99301
(509) 492-3032

s/ Seth A. Watkins

Seth A. Watkins (admitted *pro hac vice*)
Timothy C. Bickham (admitted *pro hac vice*)
Houda Morad (admitted *pro hac vice*)
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
(202) 429-3000

***Counsel for Plaintiff/Counterclaim
Defendant Tessenderlo Kerley, Inc.***

s/ Shannon M. Jost

Justo G. Gonzalez (WSBA #39127)
Brendan V. Monahan (WSBA #22315)
Shannon M. Jost (WSBA #32511)
Bradford J. Axel (WSBA #29269)
STOKES LAWRENCE VELIKANJE
MOORE & SHORE
120 N. Naches Avenue
Yakima, Washington 98901-2757
(509) 853-3000

***Counsel for Defendant/Counterclaim
Plaintiff D & M Chem, Inc.***

SO ORDERED this 3rd day of April, 2013.

s/Lonny R. Suko

Lonny R. Suko
United States District Judge

¹ On March 29, 2013, Edward F. Shea, Jr. and Shannon M. Jost each authorized the filing of this pleading with his and her electronic signature, respectively.